

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

HORTON HOMES, INC.,

Plaintiff,

v.

LARUE BANDY, MARIE BANDY,
PATRICK PRITCHETT, WILLIAM
SHANER, ELSIE FONDREN
AVERETTE, WILLIAM CRUTHIRDS,
and SHERRIE CRUTHIRDS,

Defendants.

CIVIL ACTION NO. 2:07-cv-506-MEF

DEFENDANT'S SUPPLEMENT TO THEIR MOTION TO COMPEL

COME NOW your Defendants in the above-styled cause and hereby supplement their Motion to Compel after receiving Plaintiff's Response.

Defendants hereby attach exhibits "A" and "B" as true and correct copies of letters faxed by defense counsel to Jimmy Paul on January 11, 2008 and February 1, 2008 respectively. Said letters are offered in support of Defendant's Motion to Compel Discovery.

In addition, Plaintiff has failed to answer or object to Interrogatory 26 and Defendants ask this Court to order Plaintiff to fully respond to Interrogatory 26.

Respectfully submitted on this the 12th day of March, 2008.

/s/ Frank H. Hawthorne, Jr.

FRANK H. HAWTHORNE, JR. (HAW012)
Attorney for Defendants

OF COUNSEL:

Hawthorne & Myers, LLC
322 Alabama Street, Suite A
Montgomery, AL 36104
(334) 269-5010 / (334) 834-0080 Fax

OF COUNSEL:

Michael S. Harper
P.O. Box 780608
Tallassee, AL 36078
(334) 283-6855
(334) 283-6858 Fax

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 12th day of March, 2008, filed the above pleading/discovery electronically with the CM/ECF E-Filing System in Federal District Court. The below counsel will receive a copy from the system via email if registered in the system. If not, I certify that I have placed a copy of the same in the U.S. mail this day.

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Chamberlin, Hrdlicka, White, Williams & Martin
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/s/ Frank H. Hawthorne, Jr.

OF COUNSEL

"A"

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Randy Myers

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Of Counsel
Frank H. Hawthorne
1923-2002

January 11, 2008

Sydney F. Frazier, Jr., Esq.
Cabaniss, Johnston, Gardner, Dumas, & O'Neal LLP
P.O. Box 830612
Birmingham, AL 35283-0612

**VIA U.S. MAIL AND FAX
TO (205) 716-5839**

James L. Paul, Esq.
Thomas C. Grant, Esq.
Chamberlain, Hrdlicka, White, Williams, & Martin
191 Peachtree Street Northeast Thirty-Fourth Floor
Atlanta, GA 30303

**VIA U.S. MAIL AND FAX
TO (404) 659-1410**

Re: Horton Homes, Inc. v. Bandy, et al.
Case Number: 2:07-CV-506-MEF

Dear Gentlemen:

On November 13, 2007 we received your responses to our Request for Production of Documents numbers one and two, which were faxed to you on October 25, 2007. You correctly assumed that "warrant" meant "warranty" and agreed to produce a copy of the Manufacturer's Warranty and the Homeowner's Manual that came with the mobile homes purchased by each Defendant in this case. It has been more than two months since you agreed to produce these documents and we would appreciate your forwarding them to us as soon as possible.

On approximately December 10, we received your responses to our Request for Production of Documents numbers 4-15 and Interrogatories numbers 4-17. Your response to our Request for Production of Documents numbers 4 and 7-11 stated that you would produce those documents. We would appreciate your forwarding those documents to us as soon as possible. In addition, you interposed an objection to request numbers 12-15 and we would ask you to reconsider your objection. We are available to speak with you regarding your objections in an effort to compromise.

In your response to interrogatory numbers 4, 5, 8 and 12 you answered that you would respond by making documents available for inspection. We would appreciate your producing these documents as soon as possible. In your response to interrogatory number 5 you stated that Horton is currently the sole owner of H & S Homes. However, said interrogatory requests information regarding "Who has ever held any financial interest in H & S Homes, LLC?" We would appreciate your amending your response to fully answer this interrogatory. Interrogatory number 11 requested information on when H & S Homes, LLC was initially formed and capitalized, etc. Your response referenced American Manufactured Homes, LLC. We would appreciate your amending your response to include H & S Homes, LLC and the information requested.

On January 4, 2008 we received your responses to our Request for Production of Documents numbered 16-21 and our Continuing Interrogatories numbered 18-26. Your response to request numbers 16 and 17 was that you produced exhibit 37 and 36 which are the minutes of Horton Homes, Inc. and H & S Homes, LLC. Those exhibits are not the minutes of these two businesses. Consequently, we would appreciate your production of same. Your response to Request for Production numbers 18, 20, and, 21 stated you will produce all non-privileged documents. Please advise when we can expect to receive same.

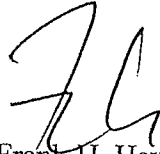
Our Request for Production of Documents number 19 asks for a copy of each and every Arbitration Agreement included in the sale of each mobile home and you responded that you produced Arbitration Agreements signed by the Defendants. As our request asks for each and every arbitration agreement, we would appreciate your producing same or amending your response to say that there are no other Arbitration Agreements other than the ones signed by the Defendants.

Interrogatory number 25 asks for the names, addresses, phone numbers, type of account and account numbers for H & S Homes, LLC. While you did identify names, addresses and phone numbers, you did not state the type of account and account numbers for any and all financial accounts of H & S Homes, LLC. While you did state you would supply this information pursuant to a mutually acceptable confidentiality agreement, we do not feel that is necessary. However, in the spirit of cooperation, we will and do agree not to reveal this information to any third party not connected with litigation involving H & S Homes, LLC or Horton Homes, Inc. Please advise as to you position.

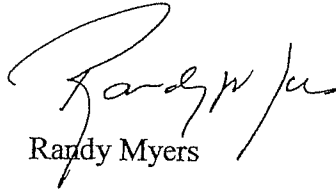
You objected to interrogatory number 26 on the grounds that we have exceeded the limit of 25 interrogatories established by F.R.C.P. 33(a). I would ask you to reconsider your position on that, as the parties clearly represented to Judge Fuller, as evidenced by our Report of Parties Planning Meeting, that paper discovery had already been initiated and additional paper discovery may be needed. Clearly the parties anticipated additional paper discovery and I would like to avoid having to take the matter before Judge Fuller over one interrogatory. In addition, our local rule does not limit the number of interrogatories. Please advise as to your position and when we can anticipate receiving the documents referenced above.

We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to be 'F.H.' with a stylized flourish.

Frank H. Hawthorne, Jr.

A handwritten signature in black ink, appearing to be 'Randy Myers' with a stylized flourish.

Randy Myers

FHHjr/jfc

CC: Michael Harper, Esq. √)

"B"

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Of Counsel
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1923-2002

February 1, 2008

Jimmy L. Paul, Esq.
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191 Peachtree Street Northeast Thirty-Fourth Floor
Atlanta, GA 30303

VIA MAIL AND FAX
TO (404) 659-1410

Re: Horton Homes, Inc. v. Bandy, et al. 2:07-cv-506

Dear Jimmy:

We are in receipt of your letter of January 25, 2008 and respond thereto. On December 10, 2007, over seven weeks ago, you filed your response to our Request for Production of Documents numbered 4-15. In response to our Request numbers 4, 7-11, 18 and 20 you stated that you "will produce" said documents. Not receiving the documents you agreed to produce, we faxed you a letter on January 11, 2008 requesting you to produce same. You have still not produced said documents. If we have not received these documents by 5:00 p.m. next February 8, 2008, we will have no other choice than to file an appropriate motion with Judge Fuller.

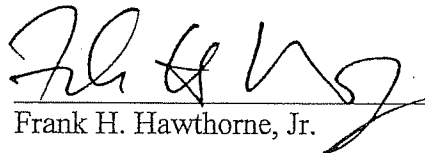
Our Request for Production number 19 asks for "a true and correct copy of each and/or every Arbitration Agreement that was included in the sale of each mobile home to each Defendant in this case." You responded that you produced Arbitration Agreements "signed by the Defendants." As we pointed out to you in our faxed letter of January 11, 2008, said request asks for each and every Arbitration Agreement that was included in the sale of each mobile home to each Defendant and said request is not limited to Arbitration Agreements that were "signed". Consequently, we would appreciate your amending that response. As I am sure you are aware, there were unsigned Arbitration Agreements relating to the Manufacturer's Warranty and/or contained in the Homeowner's Manual.

Interrogatory number 25 seeks bank account information which you agreed to disclose pursuant to a confidentiality agreement. Consider this letter as our agreement not to disseminate any of your bank information to any person or entity not connected with this lawsuit until such time as a confidentiality agreement is executed. We will work with you on a confidentiality agreement if you will promptly forward us your proposal.

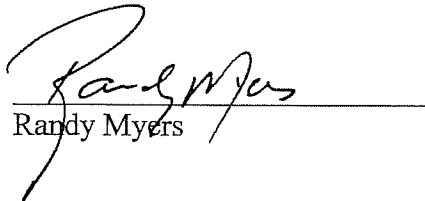
You objected to producing copies of documents pertaining to the lawsuit styled Horton Homes, Inc. v. H & S Homes, LLC pursuant to Interrogatory number 13. For the time being, we are willing to limit that Interrogatory to all documents that Horton Homes, Inc. used to form the basis for filing a 22 million dollar lawsuit against H & S Homes, LLC. Please advise as to your position.

Lastly, if you have any questions, do not hesitate to contact us.

Sincerely,



Frank H. Hawthorne, Jr.



Randy Myers

FHHjr/jfc

CC: Michael S. Harper, Esq. (fax only to 334-283-6858)
Sydney F. Frazier, Jr., Esq. (fax only to 205-716-5839)